

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MICHAEL RUDOLF,

Movant,

v.

**SOCIAL SECURITY ADMINISTRATION
OFFICE OF THE INSPECTOR GENERAL,**

Respondent.

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Civil Action No. 13-3099 (ES)

**AMENDED MEMORANDUM
& ORDER**

SALAS, DISTRICT JUDGE

This matter is before the Court on Movant Michael Rudolf's ("Movant") Motion for Order Pursuant to Customer Challenge Provisions of the Right to Financial Privacy Act of 1978 pursuant to 12 U.S.C. § 3410. (D.E. No. 1). Movant purportedly received a notice informing him that the Social Security Administration's Office of the Inspector General ("Respondent") seeks access to Movant's financial records. (D.E. No. 1-1). In a sworn statement, Movant asserts that the records sought "are not relevant to the legitimate law enforcement inquiry stated in the Customer Notice that was sent to [him] because: the account was compromised w/out proper notification [and that he] was unable to prevent this." (*Id.*). Movant adds that "this account was closed [on] 12/5/12 and other arrangements have been made on Mark Rudolf's behalf." (*Id.*).¹ Finally, Movant provides the Court with proof that he served his motion and sworn statement upon the Respondent. (D.E. No. 1-2). Movant accordingly seeks an order preventing the Respondent from obtaining access to his financial records.

¹ Movant does not set forth who "Mark Rudolf" is. Furthermore, after Movant filed his motion, the Court received a letter from an attorney (who has not made an appearance in the instant civil action) explaining that "a Trustee has been appointed on behalf of Mark Rudolf." (D.E. No. 2). This submission, however, is not material to the Court's disposition of the instant motion.

Under 12 U.S.C. § 3410(a), a bank customer may file, in the appropriate district court, “an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request.” Such a motion must be made within ten days of the service or fourteen days of the mailing of the subpoena, summons, or formal written request seeking financial records. *Id.* The motion must also be accompanied by a sworn statement or affidavit from the customer stating (1) “that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought”; and (2) “the applicant’s reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this chapter.” *Id.* The customer must effect service upon the Government authority at issue. *Id.* If the customer complies with these requirements, the district court must “order the Government authority to file a sworn response.” *Id.* § 3410(b).

Here, although Movant has provided the required sworn statement and proof of service, he has not provided this Court with evidence showing that his motion is timely. Indeed, a bank customer may file a motion such as Movant’s motion “[w]ithin ten days of service or within fourteen days of mailing of a subpoena [sic], summons, or formal written request.” 12 U.S.C. § 3410(a). But Movant has not provided the Court with any information regarding the notice he received. Thus, the Court is unable to determine whether Movant has complied with the statutory requirements under 12 U.S.C. § 3410(a).

Accordingly, IT IS on this 10th day of January 2014,

ORDERED that Movant’s motion, (D.E. No. 1), is hereby DENIED *without prejudice*; and it is further

ORDERED that, by no later than February 14, 2014, Movant may supplement his motion by providing the Court with (1) a copy of the Customer Notice and (2) evidence of the date upon which the Customer Notice was mailed or served upon Movant; and it is further

ORDERED that failure to timely provide this documentation will result in dismissal of this action, *with prejudice*, without further notice.

s/Esther Salas
Esther Salas, U.S.D.J.